SIXTH DIVISION
January 24, 2014

No. 1-12-3587

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THORNDALE BEACH NORTH CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 10 M1 717264
v.	)	
VIOREL BERAR,	)	Honorable Orville E. Hambright,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the grant of summary judgment in favor of plaintiff on its complaint seeking possession of defendant's condominium unit and for fines, fees, and costs related to defendant's alleged violations of various rules and regulations passed by plaintiff's board of directors. We also affirmed the denial of defendant's motion to reopen the proofs and the denial of his motion for reconsideration.

¶ 2 Plaintiff, Thorndale Beach North Condominium Association, filed a complaint against defendant, Viorel Berar, an owner in fee simple of one of plaintiff's condominium units, seeking possession of defendant's unit and an award of fines and fees related to defendant's alleged violation of various rules and resolutions passed by plaintiff's board of directors. The trial court ultimately

granted partial summary judgment in favor of plaintiff, awarded plaintiff $1,225 in fines, $5,171.50 in attorney fees, and $238 in costs, and granted plaintiff possession of defendant's unit. Defendant filed a motion to reopen proofs, which the trial court denied, and a motion for reconsideration, which the trial court also denied. Defendant appeals the grant of summary judgment and the award of fines, fees and costs, as well as the denial of his motion to reopen the proofs and the denial of his motion for reconsideration. We affirm.

¶ 3 In 2004, defendant filed a complaint with the City of Chicago Department of Consumer Services (CDCS) against Just Windows, Ltd., about its allegedly faulty installation of the windows inside his unit. The CDCS dismissed defendant's complaint on April 4, 2004, when he failed to appear at the investigative hearing. Defendant refiled his complaint with the CDCS against Just Windows, Ltd. in 2008. The CDCS transmitted a copy of that complaint to plaintiff. Plaintiff filed a verified response to defendant's complaint, arguing that it was not a party to the window installation nor was it in any other way legally liable for the installation. Following a hearing before the CDCS's deputy commissioner and attorney attended by plaintiff's attorney, the CDCS's deputy commissioner and attorney issued an order finding that the 2008 complaint filed by defendant failed to set forth anything plaintiff had done which would justify the CDCS in taking any action against plaintiff. Plaintiff subsequently sought to recover from defendant the out-of-pocket legal expenses it incurred in preparing the response to defendant's complaint and appearing at the CDCS hearing. Recovery of said expenses was sought pursuant to a resolution (the frivolous lawsuit resolution) passed by plaintiff's board of directors forbidding a unit owner from filing a lawsuit against plaintiff which is "found by a court to be in whole or in part frivolously filed." Defendant refused to pay.

¶ 4 Plaintiff subsequently levied fines and fees against defendant for other alleged violations of rules and regulations passed by plaintiff's board of directors. Specifically, plaintiff determined that defendant had violated paragraph 15(a) of plaintiff's General Rules and Regulations (the elevator rule), which states:

> "ELEVATORS: So that there will be no waiting periods or conflict of usage and so that proper padding can be prepared, elevators may not be used for moving or delivery of large items, such as furniture, appliances, etc. without proper notification to the office.
>
> (a) Move-in/Move-out dates or use of the elevator are not assigned for any Saturdays, Sundays or Holidays."

¶ 5 Because defendant was observed loading a mattress onto a truck parked in the rear driveway of the condominium on June 7, 2009, a Sunday afternoon, plaintiff determined that defendant had violated the elevator rule. On June 11, 2009, defendant was served with a notice of violation of the elevator rule which informed him that due to his "long history of prior violations of the Association Rules and Regulations, a fine of up to $500 may be levied against [him]." The notice provided that defendant had until June 29, 2009, to request a hearing with respect "to the levying of the *** $500 fine and the attorney fees related to that fine." Defendant did not request a hearing and therefore on October 13, 2009, plaintiff's board of directors levied a $500 fine "plus attorney fees related to that fine."

¶ 6 Plaintiff also determined that, in addition to the elevator rule, defendant had violated two resolutions passed by its board of directors. One resolution (the long-term storage resolution)

prohibited the long-term storage of vehicles in the condominium garage and required that all vehicles parked therein must have current city stickers and license plates. "Long-term storage" was defined as "[a]ny vehicle parked in a parking space continuously for more than six months without board approval." The other resolution (the interim address resolution) required that a unit owner provide the management office with an interim address and phone number if he "plans on being out of town for an entire season or other extended period of time."

¶ 7 On July 14, 2009, plaintiff sent defendant copies of the long-term storage resolution and the interim address resolution and notified defendant he was in violation thereof. On October 5, 2009, defendant was personally served with notices of violation relative to those two resolutions. The October 5 notices informed defendant he was subject to a $300 fine for the violation of the long-term storage resolution, as well as an additional daily fine of $25 for every day after October 8, 2009, that he failed to come into compliance. The October 5 notices informed defendant he was subject to a $300 fine for the violation of the interim address resolution, as well as an additional monthly fine of $50 for every month after October 8, 2009, that he failed to come into compliance. The October 5 notices provided that defendant had until October 8, 2009, to request hearings with respect to the levying of those fines and the attorney fees related to those fines. Defendant did not request hearings. On October 13, 2009, plaintiff's board of directors levied a $300 fine against defendant for his violation of the long-term storage resolution, plus an additional daily fine of $25 "for every day after October 8, 2009, up to and including October 13, 2009, plus attorney fees related to that fine." Also on October 13, 2009, plaintiff's board of directors levied a $300 fine against defendant for his violation of the interim address resolution, "plus attorney fees related to that fine."

¶ 8 Defendant did not pay the fines levied against him for his alleged violations of the elevator rule, the long-term storage resolution, and the interim address resolution.

¶ 9 On November 10, 2009, plaintiff filed an amended complaint (case number 09 M1 719408) in the circuit court seeking possession of defendant's unit and "$4,456.00 for unpaid fines, assessments, late charges, and other fees plus costs and reasonable attorney fees against [defendant]" relating to his alleged violations of the elevator rule, the frivolous lawsuit resolution, the long-term storage resolution and the interim address resolution. Plaintiff took a voluntary non-suit of that action on May 6, 2010.

¶ 10 On May 13, 2010, plaintiff issued to defendant a notice and demand for possession pursuant to the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq*. (West 2010)) for failure to pay the fines levied against him. Defendant failed to satisfy the demand, and therefore plaintiff re-filed its complaint against defendant (case number 10 M1 717264) in the circuit court on July 28, 2010, again seeking possession of defendant's unit, and payment of "5,846.95 plus legal fees and costs for unpaid fines, assessments, late charges, and other fees" relating to his alleged violations of the elevator rule, the frivolous lawsuit resolution, the long-term storage resolution and the interim address resolution. Defendant filed an answer denying all pertinent allegations; no affirmative defenses were filed.

¶ 11 On April 25, 2011, plaintiff filed three motions for partial summary judgment. The first motion sought summary judgment in plaintiff's favor on its claim that defendant violated the frivolous lawsuit resolution by refiling a frivolous complaint with the CDCS regarding the faulty repair job on the windows inside his unit and by failing to pay plaintiff's out-of-pocket legal expenses associated with said complaint in the amount of $2,250.50.

¶ 12 The second motion sought partial summary judgment in plaintiff's favor on its claim against defendant related to his failure to pay the fines allegedly owed for his violation of the elevator rule. As discussed, the elevator rule requires a unit owner to notify the plaintiff's office prior to using the elevators to move large items such as furniture. The elevator rule also provides that "Move-in/Move-out dates or use of the elevator are not assigned for any Saturdays, Sundays or Holidays."

¶ 13 Plaintiff's second partial motion for summary judgment was supported by the attached affidavit of its president, Sigrid G. Ingold. Mrs. Ingold attested in her affidavit that the reason for the elevator rule is that since plaintiff has no separate freight elevator, "it is necessary for [plaintiff's] staff to hang pads before an elevator can be used to transport large items to protect the walls and ceilings from scratches or other forms of damage." Mrs. Ingold attested that defendant was served with a notice of violation on June 11, 2009, "relating to loading of a bed and mattress on to a truck parked in the rear of the [c]ondominium on Sunday afternoon, June 7, 2009, in violation of [the elevator rule]." Mrs. Ingold attested that plaintiff had failed to contact plaintiff in advance to reserve the use of the elevator. Mrs. Ingold also attested she was a witness to the June 7, 2009, incident described in the notice of violation and that she had observed defendant "loading a mattress onto a truck parked in the rear driveway at approximately 12 noon on June 7, 2009." Mrs. Ingold also stated she "personally observed [defendant] using the elevator to move a second load of bed components including a bed frame and head board out of the building."

¶ 14 Mrs. Ingold attested that the June 11, 2009, notice of violation gave defendant until June 29, 2009, to request a hearing thereon, that defendant failed to request a hearing, and that as of December 31, 2010, defendant owed $500 in fines related to his violation of the elevator rule, plus

$327 in attorney fees.

¶ 15 Plaintiff's third motion for partial summary judgment sought summary judgment in plaintiff's favor on its claims against defendant related to his failure to pay the fines allegedly owed for his violation of the long-term storage resolution and the interim address resolution. Plaintiff's motion was supported by the attached affidavit of Mrs. Ingold. Mrs. Ingold attested that "following inspections of [defendant's] garage space by Mrs. Ingold and others on several subsequent occasions before October 5, 2009, it was observed that [defendant] had failed to come into compliance with the [long-term storage] resolution." Mrs. Ingold also attested that "before October 5, 2009, it *** became clear from [defendant's] failure to subsequently send any communications to [plaintiff], that he had also failed to come into compliance with the [interim address resolution]." Mrs. Ingold attested that on July 14, 2009, plaintiff sent defendant copies of the long-term storage resolution and the interim address resolution and notified defendant he was in violation thereof. Mrs. Ingold also attested that on October 5, 2009, defendant was personally served with notices of his violations of said resolutions. Mrs. Ingold attested that the October 5, 2009, notices gave defendant until October 8, 2009, to request hearings on his alleged violations of the long-term storage resolution and interim address resolution, that defendant failed to request any hearings, and that as of December 31, 2010, "the amount owed in fines, late charges and legal fees incurred in connection with the above two notices of violation was $725 plus $653.50 in legal fees."

¶ 16 Defendant filed a response to plaintiff's motions for partial summary judgment. With respect to plaintiff's first motion for partial summary judgment relating to defendant's alleged violation of the frivolous lawsuit resolution, defendant argued that by its own terms the frivolous lawsuit

resolution only applied "where a unit owner filed a law suit against the Board of Directors or [plaintiff] found by a court to be in whole or in part frivolously filed." Defendant argued that he only filed a complaint with the CDCS, not a lawsuit, and that no court found said complaint to be frivolously filed. Accordingly, defendant contended he never violated the frivolous lawsuit resolution.

¶ 17 With respect to plaintiff's second and third motions for partial summary judgment, defendant argued that the notices of violation failed to allege sufficient facts to support plaintiff's claims that defendant violated the elevator rule, the long-term storage resolution, and the interim address resolution. Defendant also argued that the notices of violation did not demand payment of a fine already assessed and did not give him at least 30 days to satisfy the terms of the demand before plaintiff filed an action as required by section 9-104.1 of the Forcible Entry and Detainer Act. 735 ILCS 5/9-104.1 (West 2010).

¶ 18 Defendant did not submit any counter-affidavits in response to plaintiff's motions for summary judgment, nor did he request that written or oral discovery be conducted.

¶ 19 The trial court denied plaintiff's first motion for partial summary judgment on June 1, 2011, and denied the remaining partial summary judgment motions on June 22, 2011. The record on appeal does not contain any transcripts, certified bystander's reports, or agreed statements of fact for the hearings on plaintiff's partial summary judgment motions.

¶ 20 On August 1, 2011, plaintiff filed a motion for reconsideration of the order denying its first motion for partial summary judgment (*i.e.*, the summary judgment motion related to defendant's allegedly frivolous CDCS complaint). On October 20, 2011, plaintiff withdrew its motion to

reconsider the order denying its first motion for partial summary judgment. The order denying plaintiff's first motion for partial summary judgment is not the subject of this appeal.

¶ 21 Also on August 1, 2011, plaintiff filed a motion for reconsideration of the order denying plaintiff's second and third motions for partial summary judgment (*i.e.*, the summary judgment motions related to defendant's alleged violations of the elevator rule, the long-term storage resolution, and the interim address resolution). Defendant filed a response asking the court to deny the motion. It is unclear from the record on appeal whether a hearing was held on the motion; we note that the record contains no transcript, certified bystander's report, or agreed statement of facts from any such hearing. On September 12, 2011, the trial court granted plaintiff's motion for reconsideration of its earlier denial of plaintiff's second and third motions for partial summary judgment, and entered summary judgment for plaintiff on said motions.

¶ 22 On January 10, 2012, plaintiff filed a motion for attorney fees and costs, seeking: "prefiling legal fees" incurred prior to filing the amended complaint in case number 09 M1 719408 in the amount of $3,219; "legal fees and costs" incurred in case number 09 M1 719408 in the amount of $11,168; attorney fees incurred in case number 10 M1 719408 in the amount of $13,357; and out of pocket expenses incurred in case number 10 M1 719408 in the amount of $238. Plaintiff's motion for attorney fees was made pursuant to section 9(g)(1) of the Condominium Property Act, which provides:

> "If any unit owner shall fail or refuse to make any payment of *** the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable attorney fees incurred enforcing the ***rules and regulations of the board of managers ***

shall constitute a lien on the interest of the unit owner in the property." 765 ILCS 605/9(g)(1) (West 2007).

¶ 23 Defendant's counsel was granted leave to withdraw on January 26, 2012. Defendant's current counsel filed his appearance on February 28, 2012.

¶ 24 On March 26, 2012, plaintiff filed a supplemental motion for attorney fees and costs seeking an additional $703 for time spent on court appearances in case number 10 M1 719408 between January 12, 2012, and March 1, 2012.

¶ 25 On April 9, 2012, defendant filed a response to plaintiff's motion for attorney fees and costs. Defendant argued that plaintiff had failed to establish the reasonableness of the attorney fees and costs sought. Defendant also argued that plaintiff had "wrongfully obtained judgments [with respect to his alleged violations of the long-term storage resolution, interim address resolution and elevator rule] upon which its fee and costs requests are based." In support of his argument that plaintiff's fee and costs requests were based on wrongfully obtained judgments, defendant attached his affidavit attesting in pertinent part that the long-term storage resolution was not in effect at the time of his alleged violation thereof. Specifically, defendant attested that the notice of violation was dated July 14, 2009, but that the long-term storage resolution was not presented to the unit owners for consideration and vote until October 19, 2010. Defendant further attested that even before October 19, 2010, he had donated the vehicle in question to Mr. Petru Pelian, and that the vehicle was no longer in the parking space in the garage and thus was not in violation of the long-term storage resolution. Finally, defendant attested that he owned a deeded parking space in the garage and therefore that plaintiff had "no basis for charging [him] with a violation [of the long-term storage

resolution]."

¶ 26 With respect to his alleged violation of the interim address resolution, defendant attested that the notice of violation was dated July 14, 2009, but that the resolution was not then in effect because it was not presented to the unit owners for consideration and vote until October 19, 2010. Defendant further attested that he was not in violation of the interim address resolution because he had provided the name and address of an emergency contact (Mr. Petru Pelian) to Mrs. Ingold (plaintiff's president) on "numerous occasions" prior to the adoption of the resolution.

¶ 27 With respect to his alleged violation of the elevator rule, defendant attested that said rule applied only to "Move-in/Move-out dates" and that on the date in question he was neither moving in nor moving out, but rather was a "long-standing resident unit-owner." Defendant further attested he moved only a mattress, not a bed as attested to by Ms. Ingold, and that the use of an elevator to move a mattress does not violate the rule.

¶ 28 Defendant further attested that he understood from his prior attorney that the plaintiff's three motions for partial summary judgment on its claims related to his alleged violations of the long-term storage resolution, the interim address resolution, and the elevator rule had all been denied and that the case was set for trial in August 2011. Defendant attested he had not been made aware of plaintiff's filing of the motions for reconsideration of the orders denying its motions for partial summary judgment, or the rulings on those motions, and that had he been aware of the reconsideration motions, he would have filed this affidavit earlier.

¶ 29 On April 13, 2012, the trial court entered an order scheduling a pre-trial conference on April 26, 2012, on the issue of plaintiff's motion for attorney fees. On April 26, 2012, the trial court

entered an order continuing the matter for a "further pretrial conference" on May 30, 2012. On May 30, 2012, the trial court entered an order stating that "plaintiff's motion for attorney fees is continued to June 13, 2012." The record on appeal contains no transcript, certified bystander's report, or agreed statement of facts for any of the pre-trial conferences held on plaintiff's motion for attorney fees.

¶ 30 On June 13, 2012, defendant filed an "emergency motion to reopen proofs" in which he asked the trial court to vacate its September 12, 2011, order granting plaintiff's second and third motions for partial summary judgment. Defendant asked the trial court to set the matter for trial. Defendant's emergency motion to reopen proofs largely repeated the same arguments he made in his response to plaintiff's motion for attorney fees and costs and was supported by the same affidavit. The record on appeal contains no transcript, certified bystander's report, or agreed statement of facts for the hearing held on defendant's emergency motion to reopen proofs.

¶ 31 There is no order in the appellate record explicitly denying defendant's emergency motion to reopen proofs; however, such a denial of defendant's motion is implicit in an order entered on June 13, 2012, which granted plaintiff possession of defendant's unit and awarded plaintiff $1,225 in fines, $5,171.50 in attorney fees, and $238 in out-of-pocket costs. As discussed later in this order, the trial court subsequently made explicit mention of the denial of defendant's motion on December 6, 2012.

¶ 32 Meanwhile, on July 14, 2012, defendant filed a motion to reconsider the June 13, 2012, order, which again repeated the same arguments he made in his response to plaintiff's motion for attorney fees and costs and in his emergency motion to reopen proofs. Defendant again attached his same affidavit. The record on appeal contains no transcript, certified bystander's report, or agreed

statement of facts for the hearing on defendant's motion for reconsideration. The record on appeal does contain an affidavit filed by Mrs. Ingold on September 12, 2012, with an attached copy of the minutes from the July 13, 2009, meeting of plaintiff's board of directors. The minutes indicate that the long-term storage resolution and interim address resolution were passed by the board of directors at the July 13, 2009, meeting. Mrs. Ingold attested that notice of the July 13, 2009, meeting of the board of directors was "appropriately posted" on the locked condominium association bulletin boards on the first and second floors of the condominium, on the inside glass of the management office, and on the open bulletin board in the laundry room, at least 48 hours in advance of the board meeting.

¶ 33 On December 6, 2012, the trial court issued an oral ruling from the bench on defendant's motion for reconsideration, a transcript of which is included in the record on appeal. The trial court noted that defendant's motion, supported by his affidavit, was "essentially [a] motion to reconsider [the] denial of reopening the proofs"; the trial court thereby confirmed that defendant's emergency motion to reopen proofs had, in fact, been denied on June 13, 2012. In denying the motion for reconsideration, the trial court found that defendant could have filed his affidavit in response to plaintiff's motions for partial summary judgment, but that he had failed to do so, thereby leaving Mrs. Ingold's affidavit in support of plaintiff's second and third motions for partial summary judgment uncontradicted and necessitating judgment in favor of plaintiff. The trial court determined it would not give defendant a second "shot[] at the apple" by considering his affidavit which should have been filed at the time the summary judgment motions were before the court. Accordingly, the trial court denied defendant's motion for reconsideration. The trial court also entered a written order on December 6, 2012, stating that defendant's motion for reconsideration was denied for the reasons

stated on the record and that there was no just reason to delay an appeal pursuant to Supreme Court Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Defendant appeals.

¶ 34 I. Defendant's Appeal From the September 12, 2011, Order

¶ 35 First, defendant contends the trial court erred on September 12, 2011, in granting plaintiff's motion for reconsideration of its earlier denial of plaintiff's second and third motions for partial summary judgment, and in entering summary judgment for plaintiff on said motions. "Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. [Citation.] We review cases involving summary judgment *de novo*. [Citation.]" *Pekin Insurance Co. v. Pulte Home Corp.*, 404 Ill. App. 3d 336, 339 (2010). A motion to reconsider a grant of summary judgment typically questions the trial court's application of existing law, and the court's ruling on such a motion is reviewed *de novo*. See *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1063 (2010).

¶ 36 "The movant in a summary judgment proceeding bears the burden of coming forward with competent evidentiary material which, if uncontradicted, entitles him to judgment as a matter of law." *Groce v. South Chicago Community Hospital*, 282 Ill. App. 3d 1004, 1010-1011 (1996). "Once the party seeking the summary judgment produces such evidence, the burden of production shifts to the party opposing the motion." *In re Estate of Sewart*, 236 Ill. App. 3d 1, 8 (1991). "The nonmovant may not simply rely on his pleadings to raise issues of material fact." *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 16. "Uncontested,

sworn affidavits submitted in support of a motion for summary judgment must be accepted as true for purposes of deciding the motion, contrary assertions in an opponent's pleadings notwithstanding." *Sacramento Crushing Corp. v. Correct/All Sewer, Inc*., 318 Ill. App. 3d 571, 576 (2000). "In the face of supporting affidavits from the moving party, the nonmovant must submit counteraffidavits (or refer to depositions or admissions on file) in order to raise an issue of fact sufficient to survive summary judgment." *Id*. at 575. "Failure to file counteraffidavits in opposition to a summary judgment motion supported by affidavits is fatal." *Id*.

¶ 37 In the present case, defendant contends the trial court erred on September 12, 2011, in granting plaintiff's motion for reconsideration of its earlier denial of plaintiff's second and third partial summary judgment motions and entering summary judgment for plaintiff on said motions. As discussed, in its second motion, plaintiff sought summary judgment on its claim that defendant owed certain fines for violating the elevator rule. In its third motion, plaintiff sought summary judgment on its claims that defendant owed certain fines for violating the long-term storage resolution and the interim address resolution.

¶ 38 Plaintiff's power to impose fines against defendant arises from section 18.4(l) of the Condominium Property Act, which provides that the board of managers of a condominium association is vested with the powers to "impose charges for late payment of a unit owner's proportionate share of the common expenses, or any other expenses lawfully agreed upon, *and after notice and an opportunity to be heard, to levy reasonable fines for violation of the declaration, by-laws, and rules and regulations of the association*." (Emphasis added.) 765 ILCS 605/18.4(l) (West 2010). Accordingly, to levy a fine against a unit owner, plaintiff must establish: (1) violation of a

condominium association rule; (2) notice of the violation; and (3) an opportunity to be heard. See *Board of Managers of Village Square I Condominium Ass'n v. Amalgamated Trust and Sav. Bank*, 144 Ill. App. 3d 522, 529 (1986).

¶ 39 Plaintiff met its burden, as the summary judgment movant, of establishing facts showing defendant's violation of condominium association rules and regulations, notices of the violations, and opportunities to be heard, which, if uncontradicted, entitle plaintiff to judgment as a matter of law on its second and third motions for partial summary judgment on its claims to recover the fines imposed for defendant's violations of the elevator rule, the long-term storage resolution, and the interim address resolution. Specifically, plaintiff established, *via* Mrs. Ingold's affidavit, and the attachments thereto, that: plaintiff is a condominium association which had passed the elevator rule, the long-term storage resolution and interim address resolution prior to defendant's alleged violations thereof; defendant violated the elevator rule by using an elevator to move a mattress, bed frame and head board on a Sunday afternoon; that defendant violated the long-term storage resolution by storing his vehicle in the condominium garage for more than six years without current license plates or a City of Chicago sticker; and that defendant violated the interim address resolution by failing to provide plaintiff with an interim address and phone number where he could be reached in case of an emergency. Plaintiff also established, via Mrs. Ingold's affidavit, that defendant was notified of said violations and given the opportunity to be heard thereon, but that defendant failed to avail himself of the opportunity for hearings on his violations.

¶ 40 As plaintiff presented facts through Mrs. Ingold's affidavit that entitled it to judgment as a matter of law, the burden shifted to defendant to come forward with some facts creating a material

issue of fact. *Triple R Development, LLC*, 2012 IL App (4th) 100956, ¶ 16. Defendant failed to meet his burden, where he filed no counter-affidavit during the summary judgment proceedings. *Sacramento Crushing Corp*., 318 Ill. App. 3d at 575. In the absence of a counter-affidavit, Mrs. Ingold's sworn affidavit was properly taken as true for purposes of deciding the motion. *Id*. at 576.

¶ 41 Instead of filing a counter-affidavit, defendant filed a response to plaintiff's summary judgment motions in which he argued that the notices of violation failed to allege sufficient facts to notify him of the charges against him. Defendant's argument is without merit. The June 11, 2009, notice of violation of the elevator rule informed defendant he had been observed loading a mattress onto a truck parked in the rear driveway of the condominium at approximately noon on Sunday, June 7, 2009, in violation of the elevator rule's prohibition against using elevators to move large items such as furniture and appliances on Saturdays, Sundays, and holidays. The October 5, 2009, notice of violation of the long-term storage resolution informed defendant he had violated said resolution by storing his vehicle in the condominium garage for more than six years without current license plates or a City of Chicago sticker. The October 5, 2009, notice of violation of the interim address resolution informed defendant he had violated said resolution by failing to provide an interim address and phone number where he may be reached while he is out of town. All these notices adequately apprised defendant of the charges against him; we find no material question of fact regarding the sufficiency of the notices.

¶ 42 Defendant also argued in his response to plaintiff's summary judgment motions that the notices of violation did not demand payment of a fine already assessed and did not give him at least 30 days to satisfy the terms of the demand before plaintiff filed an action as required by section 9-

104.1 of the Forcible Entry and Detainer Act. 735 ILCS 5/9-104.1 (West 1997). Defendant has waived review of these issues by failing to raise them on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 43 In conclusion, plaintiff met its burden of establishing facts (*via* Mrs. Ingold's affidavit) entitling it to judgment as a matter of law on its second and third motions for partial summary judgment on its claims to recover the fines imposed on defendant for his violations of the elevator rule, the long-term storage resolution, and the interim address resolution. The burden of production then shifted to defendant, who failed to file a counter-affidavit and otherwise failed to come forward with evidence creating a material issue of fact. Accordingly, we affirm the September 12, 2011, order granting plaintiff's motion for reconsideration of its earlier denial of plaintiff's second and third motions for partial summary judgment and entering summary judgment in favor of plaintiff. In further support of our holding, we note defendant's failure to provide us with any transcripts, certified bystander's reports, or agreed statements of facts from any of the hearings on the summary judgment motions or the motions for reconsideration. Any doubts arising from the incomplete record are resolved against defendant, as the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 44 II. Defendant's Appeal From the June 13, 2012, Order

¶ 45 Next, defendant contends the trial court erred on June 13, 2012, when it awarded plaintiff $5,171.50 in attorney fees. An appropriate attorney fee "consists of reasonable charges for reasonable services [citation]; however, to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client [citation], since this

type of data, without more, does not provide the court with sufficient information as to their reasonableness–a matter which cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees. [Citations.] Rather, the petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor. [Citations.] Because of the importance of these factors, it is incumbent upon the petitioner to present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated. [Citations.]" *LaHood v. Couri*, 236 Ill. App. 3d 641, 648-49 (1992).

¶ 46 Once presented with this information, "the trial court should consider a variety of additional factors such as the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client [citation], and whether there is a reasonable connection between the fees and the amount involved in the litigation [citations]." *Id*. at 649. The trial court's decision will not be reversed absent an abuse of discretion. *Id*.

¶ 47 Plaintiff filed its initial motion for attorney fees on January 10, 2012, and it filed a supplemental motion for attorney fees on March 26, 2012. Plaintiff's motions (which were made part of the record on appeal) included an itemization of the services performed, the date the tasks were performed, by whom they were performed, the time expended thereon and the hourly rate charged. Defendant argues on appeal that the motions failed to "provide a single sum certain." Defendant's argument is belied by plaintiff's motion and supplemental motion, which seek specific amounts of

attorney fees.

¶ 48 Defendant argues that plaintiff's motion failed to provide sufficient records maintained during the course of the litigation containing facts and computations upon which the charges are predicated. See *LaHood*, 236 Ill. App. 3d at 649 (requiring the petitioner to present such records in support of his request for attorney fees). Defendant also argues that plaintiff improperly sought attorney fees for a claim upon which it did not prevail (*i.e.*, the claim involving defendant's allegedly frivolous CDCS complaint) and that the trial court "did not strike those fees or otherwise indicate that fees related to that CDCS claim had been identified and excluded." Defendant further argues that the trial court "ignored the applicable law in awarding legal fees" by failing to consider either the nature of the case or the importance of the matter; rather, according to defendant, the trial court "arbitrarily picked a number for the fee award." Accordingly, defendant contends we should reverse the award of attorney fees.

¶ 49 Defendant has failed to provide a sufficient record in support of his arguments for reversal of the trial court's award of attorney fees. As discussed earlier in this order, the trial court held multiple pre-trial conferences on plaintiff's motions for attorney fees. Presumably, the issues raised on appeal by defendant here, *i.e.*, whether plaintiff's charges were supported by sufficient facts, whether plaintiff improperly sought attorney fees for the claim involving the CDCS complaint, and whether the nature of the case and importance of the matter supported plaintiff's fee request, would have been considered and addressed during those pre-trial conferences. However, defendant has failed to provide us with any transcripts for the pre-trial conferences on plaintiff's motions for attorney fees. Defendant also failed to submit certified bystander's reports or agreed statements of

facts as to these proceedings. Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). In the absence of transcripts, certified bystander's reports, or agreed statements of facts as to the pre-trial conferences on plaintiff's motions for attorney fees, we are unable to determine whether, as argued by defendant, the trial court failed to have an adequate factual basis for the award of attorney fees, whether it failed to strike fees related to the CDCS complaint, and whether it ignored applicable law by failing to consider the nature of the case and the importance of the matter and arbitrarily picked a number for the fee award. Defendant, as appellant in this case, has a duty to provide a complete record on appeal. *Foutch*, 99 Ill. 2d at 391-92. In the absence of such a record, we must presume the trial court acted in conformity with the law and with a sufficient factual basis for its findings. *Id*. at 392. Further, any doubts arising from the incomplete record are resolved against defendant. *Id*. Accordingly, we affirm the June 13, 2012, attorney fee award.

¶ 50 III. Defendant's Appeal From the Order Denying His Emergency Motion to Reopen Proofs

¶ 51 Next, defendant contends the trial court erred in "failing to grant, and not even ruling on" his emergency motion to reopen proofs, which asked the trial court to vacate the September 12, 2011, order granting plaintiff's second and third motions for partial summary judgment. As discussed earlier, there is no order in the appellate record explicitly ruling on defendant's emergency motion to reopen proofs. However, the denial of said motion was implicit in the June 13, 2012, order which, instead of vacating the September 12, 2011, order, granted plaintiff possession of defendant's unit and awarded it $1,225 in fines, $5,171.50 in attorney fees, and $238 in out-of-pocket costs. Moreover, when issuing its oral ruling on defendant's motion for reconsideration of the June 13, 2012, order, the trial court stated that defendant's motion was "essentially [a] motion to reconsider

[the] *denial* of reopening the proofs." (Emphasis added.) Thus, the trial court made clear that the emergency motion to reopen proofs had been denied. We proceed to address whether the trial court erred in so denying defendant's motion.

¶ 52 " 'The denial of a motion to reopen proofs is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of that discretion.' " *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077 (2007) (quoting *Chicago Transparent Products, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 337 Ill. App. 3d 931, 942 (2002)). In determining whether to reopen the proofs, the trial court should consider whether the moving party has provided a reasonable excuse for failing to submit the additional evidence earlier, whether granting the motion would result in surprise or unfair prejudice to the opposing party, and whether the evidence is of the "utmost importance to the movant's case." *Id*. at 1077.

¶ 53 Initially, we note the parties have failed to cite any cases in which a motion to reopen proofs was brought as a means to vacate an earlier order granting summary judgment for the opposing party. Rather, the cases cited to us involved a motion to reopen proofs brought after trial (*id*.), and brought during trial. *Polk v. Cao*, 279 Ill. App. 3d 101 (1996). Defendant also cites a case where the trial court reopened evidence after the plaintiff rested at a preliminary injunction hearing. *A-Tech Computer Services, Inc. v. Soo Hoo*, 254 Ill. App. 3d 392, 403 (1993). Even assuming, for the sake of argument, that defendant's emergency motion to reopen proofs was properly brought here to vacate the September 12, 2011, order granting plaintiff's second and third motions for partial summary judgment, we would not reverse the trial court's denial of said motion. The additional evidence sought to be submitted here through the emergency motion to reopen proofs (*i.e.*, the

evidence that the long-term storage and interim address resolutions were not in effect at the time of his alleged violations thereof, and that his conduct did not constitute violations of said resolutions or of the elevator rule) could have been brought during the summary judgment proceedings; none of the evidence was newly discovered or otherwise unavailable to him when the trial court was ruling on plaintiff's summary judgment motions. In the absence of a reasonable excuse for failing to submit this evidence during the summary judgment proceedings, the trial court did not abuse its discretion in denying defendant's emergency motion to reopen proofs. *Stoval*, 374 Ill. App. 3d at 1077.

¶ 54 Defendant argues that *Spanish Court Two Condominium Ass'n v. Carlson*, 2012 IL App (2d) 110473, compels a different result. In *Carlson*, defendant there was the owner of a condominium unit in a building governed by plaintiff pursuant to its condominium declaration. *Carlson*, 2012 IL App (2d) 110473, ¶ 3. On February 5, 2010, plaintiff brought an action against defendant under the Forcible Entry and Detainer Act, seeking possession of her condominium unit and an award of unpaid general and special assessments, late fees, and costs and attorney fees. *Carlson*, 2012 IL App (2d) 110473, ¶ 1. On March 18, 2010, defendant filed her combined answer, affirmative defenses, and counterclaim. *Carlson*, 2012 IL App (2d) 110473, ¶ 5. In her affirmative defenses, defendant admitted she had not paid her assessments from August 2009. *Carlson*, 2012 IL App (2d) 110473, ¶ 7. However, she denied she owed those assessments because plaintiff had failed to properly maintain the roof directly above her unit, resulting in a significant amount of water leakage into her unit. *Carlson*, 2012 IL App (2d) 110473, ¶ 7. Defendant also alleged that the brickwork directly above her unit had deteriorated, which allowed water to enter her unit and contributed to the damage of the walls and internal structure. *Carlson*, 2012 IL App (2d) 110473, ¶ 8. Defendant

alleged plaintiff was aware of the deteriorating brickwork, as well as of an inoperative toilet in her unit, but had refused to make the necessary repairs. *Carlson*, 2012 IL App (2d) 110473, ¶¶ 8, 9.

¶ 55 Defendant claimed that the alleged neglect by plaintiff constituted a breach of its covenant under the condominium declaration to maintain, repair, and replace the common elements of the condominium property utilizing the mandatory assessments collected by plaintiff from unit owners. *Carlson*, 2012 IL App (2d) 110473, ¶ 10. Defendant asserted that as a result of its negligence and breach of the condominium declaration covenant, plaintiff was estopped from seeking past-due assessments and associated late fees, costs and attorney fees. *Carlson*, 2012 IL App (2d) 110473, ¶ 10. Defendant alternatively argued that there be deducted from any monetary award against her an amount between $6,000 and $10,000, the estimated cost of repairing the damage to her unit. *Carlson*, 2012 IL App (2d) 110473, ¶ 10. Defendant also counterclaimed for damages between $6,000 and $10,000. *Carlson*, 2012 IL App (2d) 110473, ¶ 11.

¶ 56 On April 14, 2010, plaintiff filed motions to strike defendant's affirmative defenses and sever her counterclaim. *Carlson*, 2012 IL App (2d) 110473, ¶ 12. On November 9, 2010, the trial court granted the motions. *Carlson*, 2012 IL App (2d) 110473, ¶ 12.

¶ 57 On appeal, the appellate court stated that the issue in the case was "whether, in an action brought under the Forcible Entry Act by the board of managers of a condominium property against a unit owner for possession of the unit due to unpaid assessments, the unit owner may claim as a defense that her responsibility for the assessments was diminished or nullified by the failure of the board to maintain the common elements of the property as required in the condominium instrument." *Carlson*, 2012 IL App (2d) 110473, ¶ 16. The appellate court answered that question in the

affirmative and reinstated those defenses which alleged that the assessments had been withheld based on plaintiff's failure to maintain and repair the common elements. *Carlson*, 2012 IL App (2d) 110473, ¶ 48.

¶ 58 We need not delve into a detailed analysis of the appellate court's reasoning in *Carlson*, as the present case does not involve a similar set of facts, *i.e.*, defendant here does not allege he refused to pay the fines at issue because of a failure by plaintiff to maintain and repair the common elements. *Carlson* is also factually inapposite because there, defendant timely raised her defense about one month after the complaint was filed, before any judgment had been entered. By contrast, in the present case, the additional evidence and defenses raised in the motion to reopen proofs were not timely, where said motion was filed nine months *after* summary judgment had been entered for plaintiff and where defendant provided no reasonable excuse for failing to submit this evidence during the summary judgment proceedings. Accordingly, *Carlson* does not support defendant's argument here that the trial court erred in denying his motion to reopen proofs. We also note that the supreme court has granted a petition for leave to appeal in *Carlson*. See *Spanish Court Two Condominium Ass'n v. Carlson*, 982 N.E.2d 775 (2013).

¶ 59 IV. Defendant's Appeal From the December 6, 2012, Order

¶ 60 Next, defendant argues the trial court erred on December 6, 2012, when it denied his motion to reconsider the June 13, 2012, order, which, as noted by the trial court, was "essentially [a] motion to reconsider [the] denial of reopening the proofs." "The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. [Citation.] 'Newly discovered' evidence is evidence

that was not available prior to the hearing and trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling." *Stoval*, 374 Ill. App. 3d at 1078. "When a denial of a motion to reconsider is based on new matter not presented during the proceedings leading to the challenged order, an abuse of discretion standard of review applies. [Citation.] However, we review the trial court's application of existing law to the facts presented *de novo*." *Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Casualty Co*., 2013 IL App (1st) 113038, ¶ 15.

¶ 61 Defendant's motion to reconsider essentially sought to bring to the court's attention the same evidence raised in his motion to reopen the proofs, *i.e*., the evidence that the long-term storage and interim address resolutions were not in effect at the time of his alleged violations thereof, and that his conduct did not constitute violations of said resolutions or of the elevator rule. As discussed earlier in this order, this evidence was not newly discovered and thus was not properly raised either in the motion to reopen proofs or in the motion to reconsider.

¶ 62 Defendant's motion to reconsider also cited *Carlson* which, as also discussed earlier in this order, is factually inapposite. Accordingly, the trial court did not err in denying defendant's motion to reconsider.

¶ 63 For the foregoing reasons, we affirm the circuit court.

¶ 64 Affirmed.